IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.898/2006

United India Insurance Co. Ltd. ..... Appellant
! through: Mr.L.K.Tyagi, Adv.

VERSUS

$ Kaushalya Devi & Ors. ..... Respondents
^ through: Ms.Neelam Gupta, Adv.
for respondent No.1
None for respondents No.2 & 3

% **D**ATE OF DECISION: 14.03.2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. A short question arises for consideration in the present appeal.

2. Determining compensation under Section 163-A of the M.V.Act 1988, can the Tribunal assess compensation in excess of an annual income of Rs.40,000/- as stipulated in the IInd schedule to the M.V.Act 1988?

3. In view of the decision of the Supreme Court reported as 1 (2004) ACC 728, *Deepal Girishbhai Soni & Ors. vs. United India Insurance Co. Ltd.*, the answer is in the negative.

4. Since the question afore-noted stand conclusively answered by the Supreme Court, I need not pen down a

lengthy judgment.

5. Suffice would it be to note that in *Deepal Girishbhai Soni's* case (supra) Supreme Court referred to the legislative history of the law pertaining to awarding compensation to victims and/or their families due to injuries or death suffered by reason of rashness or negligence on the part of the driver of a motor vehicle. It was noted that law as originally enacted required compensation to be paid only on proof that the accident was a result of rash or negligent driving of a motor vehicle by the driver concerned. Exceptions were carved out when Section 140 was inserted in the statute book on the promulgation of the M.V.Act 1988. Further exception was carved out when Section 163-A was introduced in the statute book in November 1994.

6. It was noted that Section 140 and Section 163-A did not require proof of rashness or negligence. It was enough to prove that the death or injury was occasioned due to use of a motor vehicle. In para 36 -37 of the opinion in *Deepal Girishbhai Soni's* case (supra) following was observed:-

> "36. Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the objects and reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the State Governments, transport operators and members of public in relation to certain provisions thereof. Taking note of the observations made by the various provisions of the Motor Vehicles Act, the Government of India appointed a Review

Committee. The Review Committee in its report made the following recommendations:

> "The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability case. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of the death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.
>
> The General Insurance Company with whom the matter was taken up, is aggreeable in principle to a scheme of structured compensation for settlement of claims on "fault liability" in respect of third party liability under Chapter XI of M.V.Act, 1988. They have suggested that the claimants should first file their claims with Motor Accident Claims Tribunals and then the insurers may be allowed six months time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required

to exercise their option for conciliation under structured compensation formula within a stipulated time."

37. The recommendations of the Review Committee and representations from public were placed before the Transport Development Council for seeking their views pursuant whereto several sections were amended. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time."

7. In paras 43-45 following was observed:-

"43. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains *non-obstante* clause in terms whereof the owner of the motor vehicle or the authorized insurer is liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, Sub-section (2) of Section 163-A is in *pari materia* Sub-section (3) of Section 140 of the Act.

44. Section 163-A does not contain any provision identical to Sub-section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said section or Section 163-A.

45. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefor is found to be in the statute either expressly or by necessary implication. While

> granting compensation, the Tribunal is required to adjudicate upon the disputed question as regard age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act."

8. It may be that the M.V.Act 1988 is a beneficial legislation and, thus, deserves liberal construction with a view to implement the legislative intent but Courts cannot travel beyond the enacted provisions and extend the scope of the statute on the pretext of exceeding the statutory benefits to those who are not covered thereby or exceeding the limits of compensation.

9. It is thus obvious that the IInd schedule referred to in Section 163-A of the M.V.Act 1988 provides for a structured formula which has to be applied while assessing compensation to a third party involved in a fatal accident/injury. A multiplier system is introduced, pursuant whereto and in furtherance whereof the compensation has to be calculated having regard to the age of the victim or the dependents as also the annual income of the deceased/injured.

10. The same has to be reduced by 1/3rd, in consideration of the expenses which the victim would have incurred towards maintaining himself, had he been alive.

11. In the instant case, monthly income of the deceased as established at the trial was Rs.3,000/- per month. He was aged 26 years.

12. Referring to the decisions of the Supreme Court and in particular the decision reported as AIR 1996 SC 1272, *Sarla Dixit vs. Balwant Yadav*, the learned Tribunal granted benefit of future increase in the earnings, noting that since income of the deceased was determined with reference to the minimum wages, since minimum wages increase from time to time to neutralize inflation, therefore, loss of dependence had to be determined with reference to futuristic increase in the minimum wages. Thus, for computing loss of dependence assumed income has been treated as Rs.4500/- per month.

13. Claimants before the Tribunal were the mother and the father of the deceased. He was a bachelor. Father having died during the pendency of the claim petition, only mother pursued the same.

14. From the affidavit filed towards examination-in-chief by the mother on 2.9.2004 it is apparent that her age was 51 years when she filed the affidavit.

15. Multiplier adopted by the Tribunal is 18 as deceased was in the age group between 25-30 years.

16. The insurance company is aggrieved on 2 counts. Firstly, since compensation assessed was under Section 163-A of the M.V.Act, no future increase in income could be taken note of and secondly the multiplier adopted is excessive.

17. On the issue of multiplier, suffice would it be to note that there are various decisions of the Supreme Court noting

defects and deficiencies in the multiplier table contained in the IInd schedule. It has been held that the multiplier has to be applied with modifications and not only the age of the deceased but even the dependent has to be considered.

18. Noting the law that where compensation assessed is under Section 163-A of the M.V.Act 1988, benefit of income more than Rs.40,000/- per annum cannot be granted, noting that the proved income of the deceased was Rs.3,000/- per month i.e. Rs.36,000/- per annum, deducting 1/3rd as the personal expenses of the deceased I take the loss of dependence at Rs.24,000/- per annum

19. Accident took place on 8.4.2000, which proved fatal. Further noting that the mother deposed in September 2004 and stated that she was aged 51 years as of said date, age of the mother as on date of accident is between 46 to 47 years. I treat the same as 46 years.

20. Appropriate multiplier has to be 11.

21. Thus, loss of dependence to the mother comes to Rs.2,64,000/-.

22. The Tribunal has assessed the same at Rs.4,86,000/-.

23. Thus, I reduce the compensation payable by Rs.2,22,000/-.

24. Adding non pecuniary loss, total compensation awarded by the Tribunal is Rs.5,16,000/-. Deducting Rs.2,22,000/-, compensation awardable is determined at

Rs.2,94,000/-.

25. The appeal accordingly stands disposed of holding that in the instant case, total compensation payable to respondent No.1 due to unfortunate death of her son Ravinder Kumar is payable in sum of Rs.2,94,000/-. The same shall carry interest as per the award.

26. As per the award, 70% of the compensation payable would be invested in a fixed deposit with a nationalized bank or in a post office scheme, where from maximum interest can be generated. Remaining would be forthwith paid over to respondent No.1.

27. Noting that while issuing notice to show cause, only 25% of the compensation assessed by the Tribunal was directed to be released on pro rata basis as per the award, which sum has been released, I direct that the further sum payable in terms of the present decision would be paid/disbursed as afore directed within 30 days from today.

28. Interest on the sum retained by way of a fixed deposit with a nationalized or in a post office scheme would be permitted to be withdrawn by respondent No.1.

29. No costs.

30. LCR be returned.

March 14, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE